

### III. REMARKS

In response to the Election/Restriction, Applicant provisionally elects Species II, Figures 5, 5a-b, with traverse.

Applicant respectfully traverses the restriction on the basis that the restriction requirement is invalid and defective. The Examiner has not provided any reasons for the restriction, has not presented proper basis for requiring election/restriction, and has not met the burden required to establish why the claims cannot be examined together. Thus, the Examiner has not established a *prima facie* case for the restriction requirement. For these reasons, the restriction requirement should be withdrawn.

The Applicant respectfully notes that the Restriction in this Action is defective, at least because the Examiner has failed to provide any reason for requiring the Restriction. § M.P.E.P. 803 requires that the Examiner state the reasons supporting the conclusion that the claims in the application are drawn to patentably distinct species (see also § M.P.E.P. 806.05 (c)). Broad conclusory statements are inappropriate.

According to M.P.E.P. §808, the restriction requirement has two aspects. The first aspect is the "reasons" (as distinguished from the mere statement of conclusion) "why the inventions as claimed are either independent or distinct." The second aspect is the "reasons" for insisting on restriction therebetween. However, no such reasons are included in the Action. Accordingly, the Restriction is defective and must be withdrawn.

Furthermore, pursuant to M.P.E.P. § 803, restriction is proper when the search and examination of an entire application cannot be made without "serious burden". If the search and examination

of an entire application "can be made **without** serious burden" the Examiner "must" examine it on the merits, even though it includes claims to independent or distinct inventions. The Examiner has not asserted that or providing any reasoning why there are independent or distinct inventions, and has certainly not provided any reasoning as to why the entire application could not be examined without serious burden. The Examiner has also not made any showing regarding the various classes or subclasses into which the claims would be classified.

It should also be noted that although restriction may be required to one of two or more independent and distinct inventions, 37 C.F.R. § 1.141 provides that a reasonable number of species may still be claimed in one application. (See M.P.E.P. § 806.04(a)). It is noted, that the above is not and should not be construed as either an admission or confirmation that the noted species are or are not patentably distinct. Rather, it is a notation that the Restriction as made is defective and should be withdrawn.

Therefore, Applicant requests that the requirement for restriction be withdrawn because the requirement is defective in that no reasons are provided for the restriction requirement, and the examination of the application would not pose a "serious" burden on the Examiner.

Favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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Geza C. Ziegler, Jr.  
Reg. No. 44,004

28 July 2005

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Date

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I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to the Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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